



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201327023

APR 08 2013

Uniform Issue List: 408.03-00

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T.E.P.R.A.T.I

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
IRA B	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Financial Institution C	= XXXXXXXXXXXXXXXXXXXX
Bank D	= XXXXXXXXXXXXXXXXXXXX
IRA E	= XXXXXXXXXXXXXXXXXXXX
Amount 1	= XXXXXXXXXXXXXXXXXXXX
Amount 2	= XXXXXXXXXXXXXXXXXXXX
Amount 3	= XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This letter is in response to a request for a letter ruling dated October 12, 2012, as supplemented by additional correspondence dated February 21, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 2, within the 60-day period prescribed by section 408(d)(3), was due to a medical condition that occurred within the 60-day rollover period.

Taxpayer A maintained IRA B, an individual retirement account, under section 408(a) of the Code, with Financial Institution C. On July 20, 2011, Taxpayer A received a distribution of Amount 1 from IRA B with the intention to rollover the distribution within the 60-day rollover period. After the distribution, Taxpayer A requested and received information regarding possible investments of Amount 1. On August 1, 2011, within the 60-day rollover period, Taxpayer A suffered a medical injury which necessitated her receiving home medical care for 10-days and her using a support walker. Taxpayer A asserts that she was unable to wear a shoe for several weeks and was also prescribed pain medication during this period which affected her ability to manage her financial affairs. Taxpayer A further asserts that she is of advanced age and did not have any family close that could help her during this period. On September 1, 2011, after recovering from the medical condition, and after the expiration of the 60-day period, Taxpayer A completed the rollover of Amount 2 with Bank D, depositing Amount 2 into IRA E. Taxpayer A asserts that Amount 3 (Amount 1 – Amount 2) was used to cover medical expenses.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code). Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not

includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2, a portion of Amount 1, was due to a medical injury that occurred during the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to Taxpayer A's contribution of Amount 2 into IRA E, on September 10, 2001, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact XXXXXXXXXXXX  
(Identification No. XXXXXXXXX) at (XXX) XXX-XXXX. Please address all  
correspondence to SE:T:EP:RA:T1.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

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